

# FLACK AND HIS SON GRANTED A NEW TRIAL.

## Decision Reversing the Judgment of the Court of Appeals, Justices Earl and Gray Dissenting.

# JUSTICE ANDREWS' OPINION.

## Errors Were Committed by Justice Barrett, He Says, in His Charge to the Jury—The Latter Defends Himself.

# JOY OF THE EX-SHERIFF OVER THE NEWS

[BY TELEGRAPH TO THE HERALD.]  
ALBANY, N. Y., Jan. 13, 1891.—A new trial has been granted in the Flack case. The Court of Appeals today considered the case of the People versus James A. Flack and William A. Flack, and handed down a decision reversing the judgment of the lower court and granting a new trial.

The defendants are charged with falsely instituting an action for divorce in the name of Mary E. Flack, wife of James A. Flack, against her husband without her knowledge or consent, and with procuring a judgment of divorce by illegal and fraudulent practices.

Justice Andrews, in his opinion, says:—

"We are of opinion that errors were committed by the learned trial judge in his charge to the jury, which require a reversal of the judgment below. A brief reference to the law of conspiracy will aid in understanding the points upon which our judgment proceeds. The gist of the crime of conspiracy consists in a corrupt agreement between two or more individuals to do an unlawful act. At common law the crime of conspiracy was complete when the corrupt agreement was made, although no step had been taken in furtherance of the object of the conspiracy."

"A statute of New York provides that no conspiracy is to be constituted by the mere agreement of two or more persons to do an unlawful act, but that the crime is not complete until some overt act has been done in furtherance of the object of the conspiracy. The more fact that conspiracy has been formed, followed by the doing of such act, does not constitute a crime unless the act is done in furtherance of the conspiracy. The act of conspiracy is not complete until some overt act has been done in furtherance of the object of the conspiracy."

"When, taking the record as a whole, it is declared to the jury that the record of a fraudulent divorce, he intended to characterize the acts which led to the divorce, and by reason of which judgment was rendered, as being fraudulent. The learned judge invaded the proper province of the jury. The character of the acts done, the design with which they were done, and whether fraudulent or not, were questions for the jury."

"The defendant, Meeks, and Wright, the attorney, both denied any fraudulent intent. It was for the jury to say whether those acts were blunders or frauds."

Justice Earl and Gray dissented.

JUSTICE BARRETT DEFENDS HIS CHARGE AND CRITICISMS THE OPINION.

To say that the reversal by the Court of Appeals of the judgment of conviction found by the lower courts against ex-Sheriff James A. Flack and his son, William A. Flack, and the ordering of a new trial occasioned surprise in this city is putting it mildly. It created something very much like consternation. No one expected that the Court of Appeals would reverse the judgment of the lower courts and grant a new trial.

The trial is too recent to need recapitulation. It lasted over a week, and from beginning to end the case against the defendants seemed remarkably clear. Nobody was surprised when the jury found a verdict of guilty. As a result of that verdict Justice Barrett, on March 31, 1890, sentenced the older Flack to two months' imprisonment in the City Prison and to pay a fine of \$500, and the younger Flack to four months' imprisonment in the City Prison and to pay a fine of \$500.

An appeal was taken to the General Term, which affirmed the judgment of the lower courts. The Court of Appeals then considered the case, and on January 13, 1891, reversed the judgment of the lower courts and granted a new trial.

The opinion handed down by the Court of Appeals has been hailed as a masterpiece of logic and reasoning. It has been said that it is the best opinion ever written by a New York judge. It has been said that it is a masterpiece of logic and reasoning. It has been said that it is the best opinion ever written by a New York judge.

"I simply say," he began, "that the Court of Appeals has reversed the judgment of the lower courts, and that the defendants are entitled to a new trial. The Court of Appeals has reversed the judgment of the lower courts, and that the defendants are entitled to a new trial."

"The Court is reported as saying that I intended to brand the acts referred to as fraudulent devices. I asserted to the jury that the acts were fraudulent. I did not do so. I simply branded the acts as fraudulent, and left the jury to decide whether they were or not."

"The Court says that it was an error to charge that a divorce obtained by such alterations and devices was fraudulent. It is certainly not an error to charge that a divorce obtained by such alterations and devices was fraudulent. It is certainly not an error to charge that a divorce obtained by such alterations and devices was fraudulent."

"It is true, however, that the rule laid down as to criminal intent is novel. It certainly seems to conflict with the current of the decisions in this country and in England and also what has been generally understood to be the principle of the law. It is true, however, that the rule laid down as to criminal intent is novel. It certainly seems to conflict with the current of the decisions in this country and in England and also what has been generally understood to be the principle of the law."

"It seems to have been overlooked that there was positively no dispute of facts. It had been admitted by the defendants that they had obtained a divorce by such alterations and devices. It seems to have been overlooked that there was positively no dispute of facts. It had been admitted by the defendants that they had obtained a divorce by such alterations and devices."

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The storm developed into a gale, and the schooner was swept by heavy seas which threatened each moment to engulf her. She was so heavily weighted that she could not make headway. The sea was so high that the schooner's rudder chain, and from that time she drifted without control.

Efforts were made from time to time to repair the damage, but the fury of the sea rendered them useless. Long before midnight of Sunday Captain Welch had given up all hope of saving the vessel. She drifted toward her doom, at the mercy of wind and tide.

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